The Solicitors' Journal

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CURRENT TOPICS

Judge Alchin

THE late Judge ALCHIN'S many friends learnt with a great shock of his untimely death on 14th May. His brilliant and impressive presence in the courts was only equalled by the modesty and great charm of his personality in private life. At Oxford (where he was Junior Hulme Scholar before the 1914-18 war, and after it was Senior Hulme Scholar and Eldon Law Scholar and took Firsts in the Final School of Jurisprudence and the B.C.L.) he was a familiar figure on the B.N.C. sports grounds, where he regularly enjoyed a game of tennis in "college doubles." He joined the R.F.A. as a second lieutenant in 1914, served in Flanders throughout the war and was awarded the Air Force Cross. At the Bar, to which he was called by the Middle Temple in 1922, he practised at the Common Law Bar and in the Commercial Court. He had a good High Court practice and both the matter and the manner of his argument were recognised by judges, brother barristers and solicitors to be of a superior order. His mind was, if the analogy is permissible, athletic, both supple and subtle, and there can be little doubt that he enjoyed his work both at the Bench and the Bar. At the early age of forty-seven, after volunteering for the R.A.F.V.R. in 1940, he accepted an appointment as a county court judge. Practitioners in his courts always felt that he applied a standard of justice which would have been a credit to the highest tribunal. Those who knew him admired him, and now mourn him.

Solicitors and Privileged Communications

SOLICITORS conducting criminal defences are aware that they must, as a rule, walk warily. A most unusual example of how, notwithstanding all precautions, and with the best of advice, a solicitor may find himself in difficulties through taking instructions from a person charged with a criminal offence occurred in Cork, Eire, on 22nd April. We are indebted to the *Irish Law Times and Solicitors' Journal* of 3rd May, 1947, for the facts. A solicitor had been handed £8 in notes, by a man whom he had been defending on alternative charges of breaking and entering a house and stealing £30, and receiving the sum of £30 well knowing it to have been stolen. The solicitor had shown the money to a detective in his office. On the first appearance before the court the solicitor was asked to produce the pound notes, and he claimed privilege. The case was adjourned, and in the interval the solicitor retired professionally from the case. When called as a witness, on 22nd April, and asked to produce the pound notes, he again claimed privilege. Judge O'CONNOR ruled that the privilege was gone and ordered the solicitor to produce the notes on the ground that the State had suggested that the notes were part of the property alleged to have been stolen. While fining the solicitor £50 the learned judge complimented him on his "courageous stand," and said that he was acting in the best interests of the profession. At a later date Judge O'Connor announced that on thinking the matter over he had come to the conclusion that the solicitor's conduct was not contempt of court in the ordinary course of events but merely refusal to answer a question. He further said that if his ruling was upheld on appeal he ordered the £50 fine to be reduced to one shilling. It appears that the solicitor was backed by the opinion of the Incorporated Law Society of Eire and the opinion of counsel. The point is neat, but we are inclined to think that it comes within the rule in *R.* v. *Dixon* (1765), 3 Burr. 1687, that privilege attaches to communications from a client to his solicitor for the purpose of his defence.

Solicitors as Stipendiaries

MR. R. S. BISHOP, clerk to the justices of the Borough of Pudsey, in Yorkshire, made an interesting suggestion on 28th February in giving his evidence on the eleventh day of the sittings of the Royal Commission on Justices of the Peace (H.M. Stationery Office, price 9d.). It was that a solicitor of ten years' standing should be eligible for appointment as a stipendiary magistrate. In reply to the chairman, Mr. Bishop agreed that one would not normally expect to find appointed a member of the Bar whose practice had been entirely in the Chancery Division or a solicitor who did conveyancing business and nothing else. What he had in mind was that a solicitor-advocate was probably the best qualified man for appointment because he had lived his life in the magistrates' courts. Mr. Bishop did not think that a stipendiary magistrate should be foisted on a district without its consent. When one reflects on the excellent standard of advocacy, knowledge of the law and professional ethics which prevails among the solicitor-advocates who regularly attend the magistrates' courts and the county courts both in the Metropolis and the country, it is somewhat surprising that the proper claims of such advocates to some higher appointments than those of county court registrar or clerk of the peace are not more frequently put forward. If the Bar complain that the promotion of solicitors to the Bench will lessen their scope, the answer may well be that the appointment of more barristers as county court registrars and clerks of the peace will restore the balance. A reform of this sort may also be an answer to the criticism of the suggested appointment of more stipendiary magistrates, that there are not enough barristers properly qualified for such appointments.

The Lay Bench

THE sort of abuse that can occasionally arise where there is a lay bench was illustrated by LORD MERTHYR in examining the Lord Lieutenant of Pembrokeshire, Col. L. H. HIGGON, before the Royal Commission on Justices of the Peace, on 9th May. Lord Merthyr said he thought there was some dispute about the facts, but his information was that the mayor of one of the boroughs was during the war himself charged with an offence before his own court, and, during the whole of the proceedings, although he did not adjudicate, he never left the chair. Colonel Higgon replied that he had asked the Chief Constable for a report about the case, and it differed from the account given by Lord Merthyr. Lord Merthyr then asked whether it was a fact that the defendant pleaded "guilty" and was fined, and that no question was asked about previous convictions, and that there were more than half a dozen, including one for adulterating milk and another for cruelty to animals. Colonel Higgon then read from a report that the magistrate was fined 10s. 6d. and that when the superintendent was about to read the previous convictions the clerk to the magistrates stopped him and said: "I think the magistrates know all about Mr. X." So far as he knew, Colonel Higgon said, in reply to a question by Mr. DINGLE FOOT, nothing was done by the Lord Chancellor's Department or anyone else. The rest of Colonel Higgon's evidence was heard in camera, after it was said that he wished to speak of another case which he thought was very serious.

The Town Clerk

IN that excellent series in the *Observer*, in which notable personalities are described in outline, a description of "Mr. Town Clerk" appeared on 11th May. As so many town clerks are solicitors, professional vanity leads us to examine this article for compliments, but the only reference to our learned profession is a note to the effect that the great majority of town clerks are solicitors. There are also, it is added, not a few barristers, "and at least one distinguished town clerk of modern times has risen to eminence from office boy without any professional baptism, as it were." The occasion which evoked the singling out of the town clerk for a portrayal in this series was the annual town clerks' conference at Bournemouth during the week-end of 10th and 11th May. Their society, sixty strong on its formation in 1928, now numbers 470 members. When one considers even the outline of the duties of a town clerk as they are depicted in "Profile," one cannot but marvel that it should be considered possible for anyone but a trained lawyer adequately to perform all of them. "As interpreter," the writer stated, "Mr. Town Clerk must not only explain the bearing of statute law upon the functions of his corporation; he must also convert into plain English the implications of new administrative orders which Whitehall so liberally showers upon local authorities . . . He had to digest, in addition, about 2,000 statutory rules and orders. His New Year reading included the Transport, Electricity and Planning Bills." The article does not refer to the amount of existing learning on housing, town planning, public health, rating and local government law generally, as well as on the basic civil and criminal law of the land, on which the town clerk must be an authority. It is good to know that most town clerks have legal qualifications, but we cannot help thinking that "most" is not quite enough.

Conservative Policy and the Law

THE main points in the new statement of the policy of the Conservative Party as set out in "The Industrial Charter" (Conservative and Unionist Central Office, price 1s.) are economic and industrial. Legal matters are touched upon only in connection with the subjects of taxation; trade unions and the future of the nationalised industries. Further incentives are urged by way of more relief for earned income, "overcoming the present difficulty that overtime and extra money for extra effort appear to be taxed at a much higher rate than ordinary wages," and a "reduction of the total weight of direct taxation." It is pleasant to note that the Conservative Party do not intend "to indulge in a game of political tit for tat" in regard to trade unions, but they consider that legislation should be introduced to prevent organised bodies of civil servants from electing representatives to hold office in organisations with political associations, to prevent local authorities from being able to compel employees, on pain of losing their jobs, to join a political union, and to prevent unionists having to contract out of the political levy. On nationalisation, the Conservative Party would not repeal the whole of the Bank of England Act, but would re-examine the powers of the bank to give directives to the commercial banks. As regards transport, they would restore a wide measure of freedom to road transport "A" and "B" licences, to the Liverpool Cotton Market, and certain parts of civil aviation. They would review the industries already nationalised and overhaul their organisation. From the lawyer's point of view one of the most interesting features of the document is Part III, entitled, "The Workers' Charter," which seeks to guarantee security of employment, incentive and individual status to every workman, not by force of law, but by example, and the Highway Code is furnished as an instance. It would be wrong, however, to say that the Highway Code is not enforced by law for, by statute, neglect of its provisions is evidence of negligence (Road Traffic Act, 1930, s. 45 (4)).

Recent Decisions

In *R.* v. *Paddington and St. Marylebone Rent Tribunal and Others, ex parte Bedrock Investment Company*, on 13th May (*The Times*, 14th May), a Divisional Court (LORD GODDARD, C.J., and ATKINSON and OLIVER, JJ.) granted orders of certiorari to remove into the King's Bench Division for the purpose of being quashed certain decisions of rent tribunals reducing rents, on the grounds that the rents reduced were standard rents of controlled premises under the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, and that by reason of s. 7 of the Furnished Houses (Rent Control) Act, 1946, it was not competent for the tribunals to make such reductions. In the course of his concurring judgment Atkinson, J., observed that the forms sent by tribunals under the Act of 1946 to complaining tenants were on the wrong basis, as they asked, not the relevant question, what according to the contract the landlord was to provide, but what services or furniture he provided in fact.

In *Pratt* v. *North West Norfolk Assessment Committee and Another*, on 16th May (*The Times*, 17th May), the House of Lords (LORD SIMON, LORD WRIGHT, LORD SIMONDS, LORD UTHWATT and LORD NORMAND) held that a proposal to amend a current valuation list by raising the gross and rateable values of a hereditament was not invalid by reason of the fact that a number of other proposals to revalue hereditaments in the same area would cause substantially the same result as if a new valuation list had been made. The proposal fell fully within the wide terms of s. 37 of the Rating and Valuation Act, 1925, and the fact that s. 19 provided for a quinquennial revaluation did not render the proposal illegal.

In *In re City of Plymouth (City Centre) Declaratory Order, 1946: Robinson and Others* v. *Minister of Town and Country Planning*, on 12th May (*The Times*, 13th May), the Court of Appeal (LORD GREENE, M.R., and SOMERVELL and WROTTESLEY, L.JJ.) held that the wording of s. 1 (1) of the Town and Country Planning Act, 1944, did not justify the interpretation that the Minister could only make a compulsory purchase order if he was satisfied that it was requisite to do so, and that he could only be satisfied if he had before him evidence which was sufficient in law to entitle him to be satisfied. The wording of the section showed that it was a matter for the individual opinion of the Minister, and no objective test could be applied. The Minister was entitled to act on any information which might come to him in his administrative capacity, and he could not be compelled to disclose the source of his information. It was erroneous to say that he must act in a quasi-judicial capacity and his power to make the order could not be controlled by the court. The position would be different if it could be shown that he acted beyond his statutory powers, or in bad faith.

CRIMINAL LAW AND PRACTICE

DISQUALIFICATIONS FROM CARRYING ON BUSINESS AND THE ONE-MAN COMPANY

THE well-known doctrine in *Salomon* v. *Salomon & Co.* [1897] A.C. 22, that a company is a distinct person from its members, may seem to have received a slight set-back in a recent case under the Defence (General) Regulations, 1939 (*Berney* v. *Att.-Gen.* [1947] W.N. 91). Important questions of criminal law were involved.

The plaintiff asked the court to declare that art. 27 of the Consumer Rationing (Consolidation) Order, 1945, made under regs. 55 and 55A of the Defence (General) Regulations, was *ultra vires* and void, in that it purported to give powers to the Board of Trade which were repugnant to the provisions of s. 16 (3) of the Goods and Services (Price Control) Act, 1941. He also claimed a declaration that any interpretation of the regulations which would confer on the Board of Trade the power to prevent him from carrying on his business by calling in his coupons was *ultra vires* as repugnant to s. 16 (3) of the 1941 Act, and was repugnant to natural justice and to the common law of England.

A private company with a capital of £100 of which the plaintiff was the sole director, though only holding one share, the remainder being held by nominees of the plaintiff, carried on business as retailers of women's clothes at shops in Oxford Street and Regent Street, London. The company was reasonably successful, but never paid a dividend. The plaintiff voted himself substantial remuneration as director.

In December, 1944, the company was convicted of ten offences against the Prices of Goods Act, 1939, and the Goods and Services (Price Control) Act, 1941, and was fined. The plaintiff was also convicted and fined under the Acts. In May, 1945, the company was convicted and fined for six offences against the Acts and in April, 1946, the company was convicted of eight further offences. On that occasion an order was made under s. 18 (3) of the 1941 Act prohibiting the company from carrying on business for three years at their address in Regent Street.

The company thereupon passed a resolution to the effect that they should cease altogether to carry on business and dispose of all their assets in their retail businesses to the plaintiff. They appealed against their conviction, and carried on business until the appeal was due to be heard, on 25th June, 1946. On 24th June the company's solicitors wrote to the Board of Trade saying that their clients were negotiating for the sale of their business, and asking for the necessary forms to complete the necessary transfer of stock and coupon bank balance. They enclosed an application for a licence for the transfer of stock of goods and coupons to the plaintiff.

What happened next was interesting, because everyone knows that for some years past a dealer in new garments cannot carry on business without taking clothing coupons from customers and paying coupons to the wholesalers for the goods he receives, operating these payments of coupons through coupon banking accounts which the banks conduct as agents for the Board of Trade. Although the company's appeal against its disqualification was dismissed on 25th June nevertheless on 26th June the Board of Trade issued a licence authorising the transfer from the company to the plaintiff of a number of coupons not to exceed 10,175. The plaintiff had the coupons, stock and business transferred to him, and proceeded to carry on business as the company had done previously.

A few days later, the Board of Trade ordered the bank not to allow the plaintiff to operate his coupon account. Letters were written to the Board of Trade on the plaintiff's behalf asking them to revoke the stop on the plaintiff's coupon account. For nearly two months the Board of Trade failed to answer these letters but eventually they wrote that in view of the court order prohibiting the company from carrying on business for three years at the address at Regent Street, they could not facilitate the carrying on of business at that address by the plaintiff or by anyone else connected with the company. They said that they would consider any suggestions to enable the company to carry on at the Oxford Street shop without facilitating the carrying on of business at the Regent Street shop.

Later, at a meeting between the plaintiff and his solicitors and representatives of the Board of Trade the Board expressed their intention of acting under art. 27 of the Consumer Rationing (Consolidation) Order, 1945, and calling for the return from the bank of all the coupons.

Now it is to be noted that the only disqualification ordered was a penalty on the company for criminal offences which it had committed, and although the plaintiff had previously been fined, and was for all practical purposes the company, just as Mr. Salomon was in effect Salomon & Co. in the well-known case [1897] A.C. 22, nevertheless the disqualification had not been extended to him by any criminal court.

Article 27 of the Consumer Rationing Order provides that "any person shall, if so directed by the Board of Trade, deliver up any ration document specified in the direction to any person in any manner and at any time so specified, and any person to whom any ration document is so delivered up shall comply with any direction issued by the Board specifying the manner in which he is to deal with it."

Lord Goddard held that this article was within the powers given by the sections of the Acts referred to. The coupons and other ration documents were the property of the Board of Trade, who must have power to call for the delivery up to them of documents which were their property.

Lord Goddard said that the sole director was in effect the company, and if he applied for a licence to have the coupons transferred to him so that he could carry on the business in his own name instead of under the guise of the company, the Board of Trade could not only refuse to grant a licence, but would be open to grave criticism if they failed to do so, because otherwise they would be assisting in an evasion of the order of the court. The plaintiff therefore failed, as the Board were acting within their powers in calling for the return of coupons because they were not prepared to facilitate the carrying on of the business at Regent Street in defiance of an order of the court.

The inroad into the doctrine of *Salomon's* case is, however, more apparent than real. The Board of Trade are a department of the executive arm of government. All they were concerned with in this case was to see that a scheme approved by Parliament for the sharing out of clothing supplies among the public worked efficiently. They have certain powers which enable them to see that the scheme works. All that a court can inquire into is whether an executive officer, given certain powers by Parliament, has acted within those powers, and, incidentally, of course, whether those powers themselves, if given by order, are within the powers given by the statute enabling the order to be made (see *Liversidge* v. *Anderson* [1942] A.C. 206).

It is therefore not surprising that the Board of Trade can take one view of the identity of a person with a particular company, while the courts take an entirely different view. The doctrine in *Salomon's* case is at the basis of our company law. No commission on company law would ever dream of recommending its abolition. But if the company in the present case had been wound up and had thus completely put the infringement or "evasion" of the court's order out of its own power for ever, could Lord Goddard have said, as he did in the present case, that the court's order would have been defied if the plaintiff had then carried on business from the Regent Street address, with the assistance of the Board of Trade's coupon banking account? The plaintiff could certainly not have been dealt with for infringing the court ban under such circumstances. But the Board of

Trade would still have been acting quite within their powers in placing an embargo on the plaintiff's coupon banking account and in calling for the delivery up of his coupons, not because he was intending to infringe a court order, but because he was utilising the facilities given by the company law to traders in order to carry on a business which it was administratively necessary, in the interests of the efficient working of the rationing scheme, to close.

COMPANY LAW AND PRACTICE

AMENDMENTS TO THE COMPANIES BILL—II

THE original Bill adopted a recommendation of the Cohen Committee that a company should have power by ordinary resolution to remove a director from office, notwithstanding any provisions of the articles or of any agreement between the company and the director. Despite a certain amount of criticism, this provision has been retained (cl. 28), but in view of the danger that the power might result in a director being removed by what is described, with more brevity than elegance, as a "snap" vote, amendments have been made to secure that the shareholders shall be given ample time to consider the merits or otherwise of the proposed resolution. Similar considerations apply to ordinary resolutions for the appointment of directors who are over the age of seventy (cl. 29), and for the appointment and removal of auditors (cl. 23). The method employed to secure that such proposals may be duly appraised before the meeting is held is to require "special notice" to be given of the resolution; this is a new conception in company law and the result is a hybrid between a special and an ordinary resolution. The resolution is to be passed as an ordinary resolution, but the notice to be given is something more than the notice which for other purposes is required for an ordinary resolution. "Special notice" is defined or described in the following terms (cl. 2 (6)): notice of the intention to move the resolution must be given to the company not less than twenty-eight days before the meeting at which it is to be moved, and the company is to give its members notice of the resolution with the notice of the meeting or, if that is not practicable, notice of the resolution must be given by the company by advertisement or otherwise not less than twenty-one days before the meeting. As regards the twenty-eight days' notice to the company of intention to propose the resolution, there is a proviso that if the company calls a meeting for a date twenty-eight days or less after the notice has been given, it shall nevertheless be deemed to have been properly given, i.e., although the company will have had notice of the intended resolution less than twenty-eight days before the meeting.

These provisions relating to this new kind of notice are a little complicated and in one or two respects I am not clear how they will work in practice. Suppose the board of directors itself wishes to put forward an ordinary resolution for the removal of a director, the Act requires "special notice" to be given of such a resolution, but what, in such a case, is to be done about that part of the requirements relating to special notice which entails the giving of twenty-eight days' notice to the company of the intention to move the resolution? No doubt the board can go through the formality of giving that notice to the company, but I have no doubt that this particular requirement is addressed to the case where the proposal to remove a director comes from an individual shareholder or shareholders, not from the board of directors. Further, the Bill does not provide in terms, so far at least as I can discover, that resolutions requiring "special notice" can only be moved at the annual general meeting (for which twenty-one days' notice is now to be required); if they can be moved at other general meetings (of which fourteen days' notice is sufficient) the company can give notice thereof with the notice convening the meeting, but if that is not practicable, it can give notice in some other way, but in that case such notice is to be at least twenty-one days before the meeting; so that if a company is notified of the proposed resolution say eighteen days before a general meeting is to be held, it may be impracticable to give notice of it with the notice of the meeting and the time left will be too short to give notice in some other way. Presumably, in such a case, the proposal will have to wait till the next general meeting. Altogether I cannot help thinking that in some cases both shareholders wishing to propose the resolution and the company may find the machinery involved in giving "special notice" a little difficult to work smoothly.

The provisions of the Bill relating to the retirement of directors on attaining the age of seventy (cl. 29) have been considerably simplified, and though the general rule adopted in the Bill is that in a public company a person over seventy years of age cannot be appointed a director, and a director of such a company is to vacate his office at the annual general meeting following his attainment of that age, the exceptions to and qualifications of the rule are clearly set out and in substance the matter is left to the determination of the shareholders. There are three permanent exceptions to the rule, namely:—

(*a*) In the case of existing companies (i.e., companies registered before 1947), the general rule is subject to any alterations in the articles made after 1946; pre-existing provisions in the articles are overridden by the new rule except that the rule will not apply where those provisions already cover the retirement and non-appointment of directors over a given age.

(*b*) In the case of companies registered after 1946, the general rule is subject to the provisions of the articles.

(*c*) The general rule will not prevent the appointment of a director over seventy, or require a director attaining that age to retire, if the appointment is or was made or approved by the company in general meeting, provided "special notice" is given of the resolution making or approving the appointment, and the director's age is stated.

As regards a director in office at the time when this clause of the Bill comes into force, the provision terminating his office at the next annual general meeting after he attains seventy is not to apply; instead, he will vacate office at the third annual general meeting held after the provision comes into force if he has attained seventy before that meeting. This, of course, would not affect the operation of provisions in the articles involving his retirement before that meeting (e.g., the ordinary provisions for retirement by rotation), and an existing director who retired by rotation at the first or second annual general meeting after the section becomes law could not, if he was then seventy, be reappointed unless the case fell within one of the three permanent exceptions.

To turn to an entirely different topic on which the Bill in its present form makes a provision not contained in the original draft—certification of transfers. When part only of the shares comprised in a share certificate are sold, the usual practice is for the transferor to lodge the certificate with the company and for the company thereupon to certify on the transfer that a certificate covering the shares sold has been so lodged; and the purchaser or his brokers accept this certification without seeing the actual certificate. There has not hitherto been any statutory provision regulating the liability of the company in respect of such certification; there are some well-known cases on the point which, as the Cohen Report indicated, leave the present law in a not very satisfactory state. Clause 67 of the Bill has adopted the language of the Court of Appeal in *Bishop* v. *Balkis Consolidated Co.* (1890), 25 Q.B.D. 512, by providing that a certification "shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures." In *Bishop's* case the Court of

Appeal said that, accordingly, the company is estopped from denying the truth of the facts so certified. This estoppel would not, however, usually help the purchaser very much where the company certifies a transfer without seeing the transferor's share certificate; for all that the company is estopped from denying is that the transferor has produced the certificate. The company does not warrant the title, and if in fact the transferor has no title the company is not estopped from denying that the transferor had a title, and so cannot be made liable to the purchaser. Moreover, where the representation that the certificate has been lodged is untrue, but is made not fraudulently but carelessly, there is no action for damages against the company (*Peek* v. *Derry* (1889), 14 App. Cas. 337). The new clause proposes to alter this by providing that where a person acts on the faith of a false certification made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently, i.e., he will have an action in damages for deceit.

The ability of a purchaser to rely on the certification of a transfer has also been very much affected by two decisions of the House of Lords (*Whitechurch* v. *Cavanagh* [1902] A.C. 117; *Kleinwort* v. *Associated Automatic Machine Corporation* (1934), 50 T.L.R. 244), where it was held that if an official of the company certifies the transfer when in fact no certificate for the shares has been lodged, no estoppel arises against the company, since the company only authorises the certification to be given where the certificate has been produced; where it has not, the official is not acting within the scope of his authority and his statement is not the statement of the company. The Bill now provides that the certification shall be deemed to be made by the company if the person issuing the transfer is authorised to issue certificated instruments of transfer on the company's behalf and if the certification is signed by such a person or by any officer or servant of the company. Signature for this purpose need not be handwritten and may consist of initials, and the onus is on the company to show (if it be the case) that the signature was not placed on the certification either by the person whose signature it is, or by any person authorised to use the signature for the purpose of certifying transfers.

A CONVEYANCER'S DIARY

PROTECTION OF TRADE NAMES IN EQUITY

SECTION 17 of the Companies Act, 1929, provides as follows:—

"(1) No company shall be registered by a name which—

(*a*) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires . . ."

This subsection deals only with the act of registration. Once the new company is registered, the subsection is spent, even where the registration might have been stopped under the subsection before it was an accomplished fact.

But that is not the end of the matter. For an action for an injunction lies where it is shown that the name adopted for the business of the new company is so like that under which the plaintiff has carried on business as to enable the defendant to appropriate a material part of the business of the plaintiff by misleading people to suppose that they are dealing with the plaintiff when in fact they are dealing with the defendant (see *per* Brett, L.J., in *Hendriks* v. *Montagu* (1881), 17 Ch. D. 638, at p. 648). His lordship emphasised that fraudulent intent is not a necessary element in the cause of action, and, indeed, it is generally conspicuous by its absence from the reported cases. The question is whether the name will mislead, not whether it was intended to mislead. In that case, Mr. Hendriks, the actuary of, and the proper officer under an Act of Parliament to sue on behalf of, the Universal Life Assurance Society, sued Lord Robert Montagu and others, the promoters of a projected new company to be called the Universe Life Assurance Association, for an injunction restraining the registrar from registering the proposed new company under that or any other name likely to mislead or deceive the public into the belief that the new company was the same as the Universal Life Assurance Society, a company formed as long ago as 1834, and having a large business in London and India. The defendants sent out advertisements showing the name of the projected company in large letters, and the plaintiff thereupon moved for an interlocutory injunction in the terms of the writ. This motion failed before Jessel, M.R. The plaintiff appealed, filing in the meantime further evidence by eminent actuaries and accountants stating that in their opinion the similarity of names would cause confusion and damage to the company on whose behalf the plaintiff was suing. The appeal was allowed by James, Brett and Cotton, L.JJ. It is important to note that relief by way of interlocutory injunction was granted, on a *quia timet* basis, without the defendants having even registered their company. *A fortiori*, therefore, such relief would be available after registration, without proof that business had been begun. The innocence of the defendants' intention is completely immaterial in cases of this class: thus in *Manchester Brewery Co., Ltd.* v. *North Cheshire and Manchester Brewery Co., Ltd.* [1898] 1 Ch. 539 (affirmed [1899] A.C. 83) the directors of the defendant company had apparently never even heard of the plaintiff company. And, conversely, proof of actual confusion, though no doubt useful, has not been the ground of the decisions.

The protection is, of course, available not only to and against limited companies, but to and against the proprietors of businesses however constituted. Thus in *Ewing* v. *Buttercup Margarine Co., Ltd.* [1917] 2 Ch. 1, the plaintiff was a wholesale and retail provision merchant, trading under the name of the Buttercup Dairy Company. He had been in business at Leith, Scotland, since 1904; he had 150 shops in Scotland and seven in the north of England, the most southerly being at West Hartlepool. The business was on a very large scale and was well known in the trade and to the public, being generally referred to as "the Buttercup" or "the Buttercup Company." The defendant company was registered in 1916 and its office was in Westminster. Its main object was to manufacture margarine. Two of its three directors had never heard of Mr. Ewing's concern and the name was adopted in all innocence. It was held by the Court of Appeal, affirming the judgment of Astbury, J., however, that the case was one for an injunction, although the defendant company had not begun to carry on business. Astbury, J., remarked that this fact had some weight with him in granting the injunction, because no substantial injury could be caused to the defendant by having to change its name, now that all the facts were known; moreover, there was no real reason why the promoters should have chosen that name or why they should want to keep it. The turning point of the case was clearly the evidence of certain well-known provision merchants in London, Somerset and Yorkshire, showing that the plaintiff's business and its trade name were well known, and that the use by the defendant company of its own name for its proposed margarine business would cause confusion and damage and inconvenience to the plaintiff.

These rules recently came in point in an action in the Chancery Division of *Universal Pictures Company Incorporated and Universal Pictures, Ltd.* v. *Universal Star Productions, Ltd. and Others*. It was in evidence that the first-named plaintiff, an American body corporate, was the parent company of a group of companies which carried on a world-wide business in the production, distribution and exhibition of cinematograph films, and that the group had been functioning for

twenty-five years, a long time in the conditions of the particular industry. Almost every member of the group, which included the second-named plaintiff, a British company, had the word "Universal" in its title. The word "Universal" was also used in all posters, publicity and advertising matter; and three leading members of the film industry testified that in that industry the word "Universal" was completely identified in their minds with the business of the first-named plaintiff. The first defendant was a recently-incorporated British company, having among the objects set forth in its memorandum of association the statement that it was "To carry on business as cinematograph, talking and sound film producers, directors, renters, distributors and owners." About six weeks after the incorporation of the first defendant, there appeared in a London evening newspaper the statement that the first defendant was "A newly-formed British film company with ambitious plans to challenge Hollywood in the world film markets," and a description of an alleged conversation with one of the other defendants, all of whom were directors of the first defendant. When the plaintiff's solicitors called the defendants' attention to the confusion that was likely to arise, the answer was that while the defendants were anxious to prevent confusion, and would take all necessary steps to that end, they would do so "without prejudice to our inalienable right to trade under our registered name." On the action being started, a motion was brought for an interlocutory injunction restraining the defendants, and their respective officers, servants and agents, until trial or further order, from using or carrying on business under the name Universal Star Productions Limited, or any name colourably resembling the name of either of the plaintiffs, or otherwise carrying on business under any description calculated to produce the belief that the business of the defendants or any of them was that of either of the plaintiffs, or of associates of the plaintiffs, or either of them. The defendants were not represented on the motion, which came before Wynn Parry, J., on 15th November, 1946. His lordship granted an interlocutory injunction in terms of the notice of motion and ordered the defendants to pay the costs of the motion. After delivery of the statement of claim, and some negotiation, the first defendant eventually changed its name to Southern Cross Productions Limited, and paid an agreed sum of money to the plaintiffs on account of costs and damages.

This recent case and *Hendriks* v. *Montagu* show how wide the doctrine is. For what could be more universal than a name having reference to the universe? But in each case an established user of the name was protected against competition by a newcomer operating under a similar name in the same line of business. I do not suppose for a moment that the user of a word like "universal" would be protected against the acts of a person using the same name for a totally different sort of business. Thus, the Universal Life Assurance Society would hardly succeed against Universal Pictures Corporation. The crux of all these cases is the evidence given by persons of standing in the trade concerned that confusion is likely to result. Once that evidence is given the plaintiff is three-quarters of the way to victory, even on a motion asking for interlocutory relief which is in fact the substantial relief sought in the action, because the defendant is faced with the question why such a name was chosen. It is difficult for the defendant to admit having made its choice with knowledge that the name was the plaintiff's; equally, it is difficult for the defendant to explain why, if the facts were first brought to its notice after registration, it did not change its name to avoid confusion.

The recent case is a useful reminder that (with the probable exception of individuals trading without fraudulent intent, under their true names) no person or body has "an inalienable right" to use its own name if such use will cause confusion with an existing business of the same or a like name.

LANDLORD AND TENANT NOTEBOOK

ASSIGNMENT BY UNDERLEASE—I

THE consequences of purporting to grant an underlease which will necessarily outlive the head lease were, as regards the parties to the underlease, last gone into in *Milmo* v. *Carreras* [1946] K.B. 306 (C.A.), in which a mesne lessor, or at all events, grantor of an apparent sub-tenancy, unsuccessfully sued for possession on the strength of a notice to quit given after his own term had expired. When reviewing that decision (90 SOL. J. 135) I suggested that the Court of Appeal had perhaps applied propositions wider than the occasion required, by holding that the plaintiff had made himself a stranger to the land when he granted what purported to be an under-tenancy but was in law an assignment, and I discussed a number of decisions in which the effect as between the parties to the second grant had been examined. In these articles I propose to consider the position as between the grantor and his landlord and the validity of the view, which underlay the judgments in *Milmo* v. *Carreras*, that the grant deprives the grantor of all interest in the land.

There are a number of authorities which go to show that if the purported underlease be by deed it operates as an assignment. When it is by parol the position is less clear, because of the rule (now Law of Property Act, 1925, ss. 52, 54) that an assignment must be by deed. But, as I suggested at the end of the article referred to above, what is to happen if, the assignment being by deed, the terms of "the underlease" do not correspond to those of the (head) lease? Suppose less rent be reserved, is the (head) lessor to claim all from the "assignee" only what is reserved, collecting the balance from the "assignor," or, at all events, the original grantee of the lease, by virtue of the covenant to pay rent? And what happens if more rent be reserved? And what if restrictive covenants differ in (*a*) scope, or (*b*) subject-matter?

In practically all the decisions which illustrate the law, and which reveal a conflict of authority, the litigation has been between the granting tenant and his grantee, the question whether the tenant's grantor had become the superior landlord of the tenant's grantee not being directly decided. It is, I think, important to bear this in mind when considering the status of the tenant's grantor, and to consider to what extent the relationship between the other two persons may be governed by the principle of estoppel.

The history of the conflict may be said to have been begun when *Poultney* v. *Holmes* (1720), 1 Str. 405, was decided on two distinct grounds. By a verbal agreement the defendant, tenant of a farm under a lease of which some one and three-quarter years remained, agreed with the plaintiff that the latter should "have" the premises for the rest of the term, paying the same rent. The plaintiff took possession; the defendant turned him out; and the action was for trespass. The plaintiff succeeded on the grounds (*a*) that rent had been reserved unto the defendant, (*b*) no writing had been executed; therefore the parties were tenant and landlord.

Three years later came a case reported only in a footnote to another case (*Holford* v. *Hatch* (1779), 1 Dougl. 183: superior landlord cannot sue under-tenant for head rent), and one which appears to have escaped the notice of some text-book writers. The decision is that of *Palmer* v. *Edwards*, and the report is reasonably full. It appeared that in 1751 a predecessor in title to the defendant had granted a thirty-year lease to one Edmonson, who, in 1752, by indenture "assigned, transferred and set over" the premises to a predecessor in title of the plaintiff. But the indenture in question (*a*) reserved rent to Edmonson, giving him a power of re-entry on default, (*b*) contained a covenant by the grantee to repair at his own cost—whereas the 1751 lease contained covenants by the tenant to repair, and by the landlord to find materials, (*c*) contained other covenants at variance with those of the 1751 lease. The action was for breach of the covenant to

find materials, the defendant contending that he was absolved by the terms of the indenture. The judgment delivered by Buller, J., was based on the proposition that there had been an assignment, because no reversion was left. *Poultney* v. *Holmes*, the learned judge said, had decided only that what could not be an assignment (for want of form) operated as an underlease *against the grantor*. As to the new covenants in the conveyance before him, Buller, J., said there might be a question whether these were "good," but he declined to express any opinion on that point.

It is clear that this judgment disapproves the view that anything can turn on the person to whom rent is said to be reserved. There is, of course, much to be said for the proposition that if the habendum exceeds the grantor's interest, then, whether the grant complies with requirements of form or not, no sub-tenancy can result; but logically I would submit that it does not follow that the relationship of landlord and tenant should be created, even if formal requirements be satisfied, between the grantor's grantor and the new grantee.

The subsequent history of the conflict is as follows: In *Parmenter* v. *Webber* (1818), 8 Taunt. 593, a replevin action, it was held that a tenant who had agreed that a third party should "have" the premises during the remainder of the lease at a rent payable to the grantor, had no right to distrain; the reasoning being that there had been an absolute assignment so that no right of distress remained. This, I suggest, is unnecessarily wide: to say that there was no reversion would be sufficient, without introducing a proposition which would characterise the rights of the grantor's landlord or ex-landlord (as the case may be). In *Preece* v. *Corrie* (1828), 5 Bing. 24, a similar arrangement was held to create a tenancy but without any right of distress, but it was the absence of a deed that underlay the reasoning. The next authority, *Wollaston* v. *Hakewill* (1841), 3 Man. & G. 297, is important, but appears to have been cited only in *Beardman* v. *Wilson* (1868), 38 L.J.C.P. 91. I will deal with both in a later article. But the conflict came to a head when the Court of Exchequer, in *Barrett* v. *Rolph* (1845), 14 M. & W. 348, took one view, and the Court of Queen's Bench, in *Pollock* v. *Stacy* (1847), 9 Q.B. 1033, another, of the soundness of *Poultney* v. *Holmes*.

In *Barrett* v. *Rolph* the facts were that the executor of a deceased tenant agreed verbally with the plaintiff, the deceased's widow, that she should remain in the premises till the lease expired, she paying the rent; he then (alleging breach of some other condition—an allegation not accepted by the jury) authorised the defendant to enter; and the widow sued for trespass. She succeeded at first instance, but when a rule was applied for, Parke, B., indicated that he thought the decision could not be upheld and the parties accepted his suggestion for a compromise. *Poultney* v. *Holmes*, the learned baron said, was bad law; it was difficult to say that because an agreement was by parol, and therefore could not operate as an assignment, it was to be construed so as to give a lesser interest than the parties had intended.

But in *Pollock* v. *Stacy* the court refused to treat a grant by a tenant of the whole of his term at a weekly rent as an assignment, and upheld a verdict for use and occupation though the plaintiff had no interest left. It was pointed out that the last-mentioned case had not actually overruled *Poultney* v. *Holmes*, for a compromise had been reached. But whether both the reasons given for that decision were considered valid, or, as in *Palmer* v. *Edwards*, only one of them, was not stated.

It is, I think, a pity that so much less attention has been paid to *Palmer* v. *Edwards* than to *Poultney* v. *Holmes*, and I believe that if ever the questions deliberately left unanswered by Buller, J., in the former case were to become vital issues, a useful clearing of the air would result. For I suggest that while it may be desirable to give effect to intentions and to avoid branding a morally innocent person as a trespasser, and it is possible to do this when even a long fixed term is granted by the holder of a periodic tenancy with short periods, it is not sound to assume that a disposition by any tenant must make the alienee either a sub-tenant or an assignee of the term.

TO-DAY AND YESTERDAY

May 19.—Denis Daly, of Frenchbrook, in County Mayo, was admitted to Gray's Inn in April, 1710, and called to the Bar *ex gratia* on May 19th. The Society always had a stormy Irish connection. His father, Denis Daly, was a Roman Catholic who became a judge of the Common Pleas in Ireland in 1686, and also a member of the Privy Council. During the troubles of the revolution of William of Orange he was outlawed but subsequently, having helped to secure the submission of the country to the new King, he obtained the reversal of his outlawry. In 1705 and 1714 he was granted licence to keep arms. He died in 1721.

May 20.—Sir John Trevor, Master of the Rolls, died at his house in Clement's Lane, on 20th May, 1717. He was buried in the Rolls Chapel. He was born in 1637, the son of John Trevor of Brynkinalt, in Denbighshire, a judge on the North Wales Circuit. He was called to the Bar by the Inner Temple in 1661, and pursued both a legal and a Parliamentary career. As Speaker in the House of Commons he was not a success, but as Master of the Rolls from 1685 to 1688 and again from 1693 till his death he made an outstandingly good equity judge. He was a bold, dexterous man, and his character was stained by avarice. Not long after his appointment as Master of the Rolls for the second time, the House of Commons found him guilty of taking bribes as Speaker to facilitate the passage of certain legislation, and he was expelled from the House. He did not, however, lose his judgeship.

May 21.—Early in the eighteenth century a proposal was seriously considered that a new Serjeants' Inn should be built in the west part of Gray's Inn Walk, though it came to nothing in the end. On May 21st, 1726, the Benchers formulated a reply to a proposal made on behalf of the judges and serjeants. They were willing to reserve so much of the ground as was necessary to build a house, coach houses and stables for the Lord Chancellor for the time being and to grant the rest of the ground agreed for building chambers for all the judges and, so far as the ground would extend, for the serjeants.

May 22.—On 22nd May, 1739, Edward Church was appointed cook at Gray's Inn. He was to have "a salary of £20 a year for himself, scullion and turnspit," besides another £20 for finery and £16 for washing the hall and kitchen linen and scouring the brasses and sconces in the hall and the pewter and other utensils in the hall and kitchen. He was to have "the apartment in the kitchen," and he was to be allowed to keep "all the rumps, kidneys, suet of the loins and necks of mutton used in the Hall without mangling the said joints." The remains of the commons left over in the Hall were to be divided between him and the pantryman. From every member he was to have a shilling on his coming into commons and two shillings on his being called to the Bar. He was to attend to dressing the dinners. He was to provide "exceedings" beyond the ordinary commons at the rate of three shillings a week for the Bench table. "Exceedings" on Grand Days for the Bar mess and the Hall he was to charge for at "the prime cost." He was to "provide greens and roots for such gentlemen as desired the same at sixpence a week for each person."

May 23.—In 1775 Gray's Inn was minded to present a piece of plate of the value of thirty guineas to its solicitor, Mr. Darwin, and on 23rd May ordered that Mr. Dawson, its silversmith, should wait on him to know what he would choose.

May 24.—On 24th May, 1784, the Gray's Inn Benchers ordered that "the office of Librarian having been declared vacant owing to the neglect of Mickleham Atkinson, the Librarian," Henry Davis should be appointed. Atkinson had only held the office for three years. Six years later Davis was dismissed for embezzling £97.

May 25.—On 25th May, 1714, the Middle Temple bought some property on the north side of the chamber of Charles Lechmere, in Brick Court. On the west it adjoined the Rose Tavern, in Thanet Place, a little west of Temple Bar and on the east the yard of the Cross Keys, where Bernard Lintot had his publishing house.

BREACHING THE WALL

The mode of the recent terrorist attack on Acre Gaol very much resembled on a larger scale a bold Fenian attempt in London just eighty years ago, one which, however, failed in its object. Two Fenians named Burke and Casey were confined in the House of Detention at Clerkenwell, and their comrades formed a scheme to release them. A barrel of gunpowder was placed against the prison wall and exploded, blowing open a wide breach, but, unfortunately for the prisoners, a rumour had somehow reached the authorities that trouble was brewing and the two men were not allowed out for exercise in the usual way. But the incident did not end there. Several houses in Corporation Lane were blasted; four people were killed instantaneously and about forty more injured. The tragedy occurred on 13th December, 1867, and five men and a woman subsequently arrested were tried at the Old Bailey for murder on 20th April, 1868. The judges were Lord Chief Justice Cockburn and Mr. Baron Bramwell. The outstanding figure in the dock was Michael Barrett, short, square-built, with a frank, open expression and clothes which might have been those of a well-to-do farmer. The other prisoners were poor looking and undistinguished. The principal Crown witnesses were two informers, renegade Fenians, turned Queen's evidence. Only when they were before the court did Barrett show any sign of emotion and the look of disgust, hatred and contempt which he turned on them was a thing to be remembered.

BARRETT'S CONVICTION

The court was exceptionally crowded during the trial and a very great number of ladies was present. At the time of the final climax even the passages were completely blocked and a great multitude was waiting outside Newgate for the verdict. There was plenty of drama in the course of the proceedings. At the close of the case for the prosecution the woman was discharged; before leaving the dock she took Barrett's hand and, with two great tears rolling down her cheeks, kissed him gently on the forehead. At the close of the trial the jury deliberated long and eventually took their places in the dock with obvious agitation. Amid a breathless silence, the foreman announced four verdicts of acquittal and finally, in a voice barely audible, he declared Barrett guilty. Standing alone now in the dock, Barrett was asked the formal question whether he had anything to say why sentence of death should not be passed on him. He then proceeded to deliver a long, moving and masterly speech vindicating his character and very acutely criticising the evidence against him. He concluded with the words: "If it is murder to love Ireland more dearly than life, then indeed I am a murderer. If I could in any way remove the miseries or redress the grievances of that land by the sacrifice of my own life, I would willingly, nay, gladly, do so. If it should please the God of justice to turn to some account, for the benefit of my suffering country, the sacrifice of my poor, worthless life, I could, by the grace of God, ascend the scaffold with firmness, strengthened by the consoling reflection that the stain of murder did not rest upon me and mingling my prayers for the salvation of my immortal soul with those for the regeneration of my native land." Almost everyone in court was in tears; two or three ladies fainted and the Chief Justice himself betrayed considerable emotion. Barrett was the last man publicly executed in England.

COUNTY COURT LETTER

Alleged Slander of Dressmaker

IN *Yates* v. *Ten Acres and Stirchley Co-operative Society and Banner*, at Birmingham County Court, the plaintiff's case was that she had been employed by the society for twenty-two years, and had had no complaint as to her efficiency as a dressmaker. After the plaintiff left, certain garments were finished by other people. The second defendant was chairman of the society's drapery committee, and in that capacity she had made certain remarks which were interpreted by the plaintiff as being a charge of inefficiency against herself. The defence was that the remarks were never intended as a reflection upon the competence of the plaintiff, who had been a good and loyal servant. His Honour Judge Finnemore approved a withdrawal of the record upon terms endorsed on counsels' briefs, each party paying their own costs.

Greater Hardship

IN *Nicholls* v. *Reynolds*, at Bromsgrove County Court, the claim was for possession of a house in Yew Tree Road, Fairfield. The plaintiff was sixty-five, and her case was that she owned four houses and a piece of land in Yew Tree Road. The cultivation of the land provided part of her income, and she had to live near the land. Having had a possession order made against her in her present house, the plaintiff required accommodation for herself and her twenty-year-old grand-daughter. The defendant was thirty-one, and his case was that the nature of his work necessitated a house with a bath. Having been rejected from military service on medical grounds, the defendant had little chance of a council house, owing to the points plan. His wife was delicate and had to live on high ground, but she was able to work providing meals for school children. Going into rooms would involve selling furniture. His Honour Judge Langman observed that the defendant had to live within reasonable distance of his work. It would be a greater hardship upon him to leave, and judgment was given in his favour, with costs.

Exchange of Houses

IN *Lewis* v. *Noirit*, at Walsall County Court, the claim was for possession of No. 568, Sutton Road. The plaintiff's case was that No. 475, Sutton Road, was available as alternative accommodation, the only difference being that the third bedroom at No. 568 was bigger, and would take two single beds for the plaintiff's sons, aged twenty-two and four years respectively. The defendant's case was that the rooms at 475 were smaller, and his carpets and furniture would not fit. His wife had had an operation, and was unfit to move. His family consisted of three girls, a boy at school, and a baby of two years. The plaintiff's family was four sons. His Honour Judge Whitmee held that the alternative accommodation was reasonable. An order was made for possession in three months.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Why not Nationalise the Seashore?

Sir,—A reform long overdue is the abolition of private ownership of our beaches, thus establishing the legal right of the public to use them for the purpose of lawful recreation at their own free will.

It is not generally realised that at the present time the only right the public has over the seashore is the right to pass across it for the purpose of navigation or fishing; the right to fish includes the right to take shell-fish lying on the shore between high- and low-water marks.

Most of our popular seaside resorts are now under the control of the local authority, and the public are not seriously inconvenienced by the fact that they and their children use the beach only with the consent of the corporation. Certain parts of the foreshore belong, however, to private owners, and a local authority which has the power to license bathing machines cannot give the proprietors any right to place their machines on the private portions of the beach. Moreover, if the seaside visitor wanders away from the beach under the control of the local authority he may find his desire to have a bathe interfered with at the whim of a landed proprietor whose ownership includes the cliffs and the seashore.

About a year ago some people going for a walk along the cliffs came across a track leading down to the shore, and as it was a hot day they thought it would be pleasant to have a dip in the sea. But while they were making preparations the agent of the owner arrived on the scene and informed them that they were trespassing on private property and must leave at once.

As the law is at present, a person is liable to prosecution for taking seaweed or shells from the beach. As regards seaweed, various persons have a right to this. It all depends on where the seaweed is lying. If the tide casts it above the high-water mark it belongs to the owner of the land there; when cast on or growing on the foreshore—that is, the part of the beach between the high-water mark of the ordinary tides and the low-water mark—the owner of the foreshore can claim it, and can even bring an action for trespass against persons who take it. Seaweed below the low-water mark belongs to the Sovereign within whose territory it is situated.

It would seem, therefore, that private ownership of the beaches is an anomaly which might well be abolished, to make way for the right of the public to roam at will over the sea coast, and to bathe at any spot they choose.

Crick, N. C. W. EDGE.
Rugby.

NOTES OF CASES

COURT OF APPEAL

Evans *v.* Morris Motors, Ltd.

Lord Oaksey, Morton and Bucknill, L.JJ.

13th February, 1947

Master and servant—Workmen's compensation—Piece-work—Change in rates of remuneration—Allegation by employer of diminution—Proof of decreased hourly earnings insufficient—Workmen's Compensation Act, 1943 (6 & 7 *Geo.* 6, *c.* 6), *s.* 6 (1).

Appeal from a decision of Judge Hurst, given at Oxford County Court.

The respondent employee, a piece-worker, became disabled by dermatitis caused by her work and was entitled to compensation. Thereafter a reassessment was made of the piece-work rates for the work which she had been doing, which remained of the same class though transferred to a new process. She applied for compensation, her claim being under s. 6 (1) of the Workmen's Compensation Act, 1943, on the basis of an increase in the National Award for the cost of living from 3·5d. to 5·25d. an hour. At the time of disablement the employee was earning at an undisclosed piece-work rate 31·9d. an hour plus 3·5d. an hour under the National Award. At the time of her application the workers of her class were earning only 30·6d. an hour despite the increase under the National Award from 3·5d. to 5·25d. an hour. The employers, contending that the reduced hourly earnings of the workers proved a decrease in the piece-work rates, claimed to set that decrease off against the increase in the cost of living. The county court judge held that it was not sufficient merely to prove reduced hourly earnings by way of establishing a reduction in piece-work rates, and he based his award of compensation on the full amount of the increase in the National Award. The employers appealed.

Lord OAKSEY, L.J., said that it was unfortunate for the purposes of the case that the new piece-work rate was never proved in evidence. Although the matter was one of some difficulty, he had come to the conclusion that the judgment of the county court judge was right. It was argued for the company that so to hold would cut down the effect of the section, and that it would be extraordinarily difficult, if not impossible, for employers ever to prove a change in a rate of remuneration based on a piece-work rate, for, as the "pieces" were so often altered, there was great difficulty in comparing the piece-work rate obtaining at one time in one process with that obtaining at another time in a different process of the same work. For instance, the actual "pieces" for which a rate was established in the work on Horsa gliders might, according to the company, be quite different from the "pieces" for which a piece-work rate was fixed on G.P.O. vans, so that it was useless for them to prove the actual alteration of the piece-work rate, and it was, they argued, a perfectly satisfactory method to show the change in the rate of earnings an hour. In his (his lordship's) opinion, it was not impossible for an employer to prove what the piece-work rate was; and, if he did so, it did not seem impossible that the judge of fact should be able to compare that piece-work rate with the piece-work rate obtaining at the time of the accident. Having compared it, he could decide whether there had been a change in the actual rate of remuneration being paid to the workman who was a piece-worker. The respondent workman was paid not so much an hour, but at a certain piece-work rate on so many pieces.

Therefore, he (his lordship) agreed that there was not sufficient evidence to satisfy the county court judge that there had been a change in the rate of remuneration of those in the class of employment in which the workman was, except in so far as the increase in the National Award for the cost of living was proved. *Hill* v. *Wolverhampton Corrugated Iron Company, Ltd.* [1939] 2 K.B. 469, and *Trawlers (Grimsby), Ltd.* v. *Croucher* (1943), 36 B.W.C.C. 22, decided on s. 11 (3) of the Workmen's Compensation Act, 1925, were not directly in point; but, so far as they were in point, they seemed to support the county court judge's view. The appeal should be dismissed.

MORTON and BUCKNILL, L.JJ., gave judgment agreeing.

COUNSEL: *Winn*; *Everett.*

SOLICITORS: *Preston, Lane-Claypon & O'Kelly*, for *Herbert and Gowers & Co.*, Oxford; *W. H. Thompson.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re **Holliday's Will Trusts; Houghton *v.* Adlard**

Romer, J. 18th March, 1947

Administration—Residue given on trust for sale—Power to postpone—Successive life interests in residue—Tenants for life entitled to income of wasting assets—Residue includes two settled funds subject to discretionary trusts in favour of a beneficiary for life—On death of beneficiary funds transferred to trustees of testator's will—Whether rule in Earl of Chesterfield's Trusts applicable.

Adjourned summons.

The testator by his will, made in 1922, gave his residuary estate to his trustees upon trust for sale, conversion and investment, with power to postpone sale, and he settled the trust fund so constituted, subject to the payment of an annuity to his widow, on certain persons for life, with remainders over. By cl. 20 of his will he declared that the interest and other yearly produce of his estate to accrue after his death and until the actual sale should be deemed to be income applicable for the purposes of the trusts without regard to the amount of such income, or to the wasting or hazardous nature of the investments yielding it. The testator died in 1924 and his widow in 1939. The testator's residuary estate included his interest in two settled funds. The first was settled by an indenture of 1895, in the events which happened, on trust for the testator and his brother equally, subject to a discretionary power in the trustees of that settlement to apply the whole or any part of the income of that fund for the benefit of the widow of C during her life. The second fund was settled by the will of the testator's father, who died in 1898, upon trust for the testator absolutely, subject to a similar discretionary trust in favour of C's widow during her life. C's widow had, until 1939, been paid under these discretionary trusts £400 a year, the surplus income having been paid by the trustees of those funds to the trustees of the testator's will. From 1939 until her death in 1942 C's widow had received the whole of the income from both funds. Half the funds settled by the 1895 settlement and the whole of the funds settled by the will of the testator's father on the death of C's widow were transferred to the trustees of the testator's will. The question raised by this summons was whether those funds ought to be apportioned, so as to give something in the nature of income to the tenants for life under the testator's will. The trustees of the testator's will stated that they had never considered whether the testator's interest in those funds ought to have been sold.

ROMER, J., said that it was argued on behalf of those interested in income that there ought to be an apportionment of those funds in accordance with the decision in *In re the Earl of Chesterfield's Trusts* (1883), 24 Ch. D. 643, and with the principle stated in Jarman On Wills, 7th ed., pp. 1203, 1204. Those passages referred to reversionary or other interests not producing income (*Rowlls* v. *Bebb* [1900] 2 Ch. 107). The effect of the 1895 settlement and of the will of the testator's father was that the testator during his lifetime and his trustees after his death had an absolute interest in the income-bearing settled funds, subject to the power of the trustees of those funds to deflect part of the income to C's widow. The testator's interest was not reversionary at all. It was an absolute interest, but the income was temporarily charged in favour of a third person. There was no justification for holding that the equity, which had been applied to a reversionary interest in the strict sense, should be applied to an interest of that character for the purpose of adjusting the rights between tenants for life and remaindermen. That equity had no application to an income-bearing fund which was absolutely and immediately vested subject only to a charge imposed on the income. The tenants for life of the testator's estate got such income as was available and were entitled to retain it; their rights extended no further. This was not a case of a reversionary interest in respect of which the principle in *Rowlls* v. *Bebb*, *supra*, applied. The sums received since the death of C's widow ought to be applied as capital.

COUNSEL: *C. L. Fawell*; *J. L. Arnold*; *R. W. Goff.*

SOLICITORS: *Emmet & Co.*, for *Wragge & Co.*, Birmingham, for all parties.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Eastern Counties Building Society *v.* Russell

Hilbery, J. 25th February, 1947

Mortgage—Building society—Surety's liability "in respect of the advance"—Construction—Exclusion of other sums due under mortgage deed—Compound interest charged in absence of express provision.

Action tried by Hilbery, J.

By a deed of mortgage the plaintiffs, a building society, advanced to the mortgagor £775 to be repaid, with interest on it or on any part of it remaining unpaid, by specified monthly instalments. The deed was to be discharged on the mortgagor's paying "all the instalments, fines, interest, and other moneys payable" under the mortgage. On her failure to pay any of those moneys the entire sum for the time being secured by the deed according to its provisions was to become immediately

payable. The deed further contained a covenant by the defendant as surety that, if the mortgagor failed to make any of the payments due under the deed, he would if required to do so make those payments and comply with any rules under which the mortgagor had made default, and, if the mortgaged property should be sold under the statutory power of sale, would pay any deficiency left by the proceeds, " Provided always that if and whenever the amount owing to the Society in respect of the advance hereby made shall be reduced below the sum of £700 then . . . the liability of the surety " under his covenant " shall absolutely cease and determine." At the end of each year from the making of the advance the society added accrued interest to the loan, and that total, consisting of loan and interest, was again carried forward at the end of the year, so that compound interest was charged to the mortgagor though the deed did not expressly provide for it. On a claim by the society against the surety in respect of the sum remaining unpaid under the mortgage the surety contended that his liability had determined as soon as the amount of the advance itself had fallen below £700; and that the accounts should have been so kept as to show allocations of repayments to reduction of the advance. It was conceded by the society that the allocations contended for would, if made, have shown that the amount of the actual loan had fallen below £700, but they contended that the surety was liable in respect of the total sum outstanding which had not fallen below that sum.

HILBERY, J., said that counsel for the society contended: (i) that the business sense of the transaction embodied in the mortgage was that the society only meant to discharge the surety if the total amount outstanding on the security of the mortgaged property were reduced below £700; (ii) that their account as kept between them and the mortgagor showed that the total amount outstanding and owing was never reduced below £700 and that the surety was, therefore, never discharged; (iii) that if the words " the advance " in the proviso were to be construed as referring only to the amount advanced on the shares taken by and allotted to the mortgagor, none the less the words " amount owing in respect of the advance " were not the same as " of the advance there remains owing," and that the words " in respect of " were comprehensive enough to include interest, solicitor's charges and fines. He further argued that, if, in the proviso, the word " advance " were intended to refer only to the £775, it would be necessary to include in the deed a provision for apportionment as otherwise the proviso to the surety's covenant could not be worked out, and the absence of such a provision for apportionment showed that no such thing was in the contemplation of the parties. Lastly, he emphasised the fact that the accountants on both sides agreed in their evidence that building societies' accounts were not kept as the surety contended that the accounts here should have been kept. He (his lordship) was of opinion that those contentions were not well founded. The society were the party putting forward the written instrument as expressing the terms on which they were willing to contract. Therefore, it was to be construed *contra proferentes*. Moreover, the question here was not between the two principals, but between the society and the surety, and the terms defining the surety's undertaking ought to be strictly construed. It was well established that a mortgagee might not charge compound interest unless there was an agreement to that effect. As there was here no express agreement for such a charge, the account had been kept on a wrong footing and did not correctly show the true balance for which the surety could be held liable. An agreement for compound interest could be implied, and the plaintiff society urged that building society accounts were always kept in this way; but there was no evidence that the mortgagor or the surety knew it. The argument that, because no stipulation was made in the deed for allocating, therefore the inference should be drawn that the parties did not intend that that method should be adopted, was of less force than to say that, since compound interest could not be charged against a mortgagor without express agreement and there was no such agreement here, and since, by the deed in question, the surety was given an absolute discharge if the amount outstanding in respect of the advance was reduced at any time below the sum of £700, the inference was that the account must be kept so as to show the true position of the surety at all times.

The question still remained whether the surety was right in saying that under the proviso he had in fact been discharged because the words " amount owing in respect of the advance hereby made " referred only to the advance by the society of the £775. The recital stated that the mortgagor had " become entitled to an advance . . . of £775."

His lordship analysed the deed, and said that the inference was irresistible that the society, in drawing the mortgage deed, had taken care to distinguish throughout between the entire sum which, according to the deed and the rules of the society, should for the time being be secured by the deed, and the amount of the " advance " made. The proviso did not say, as it so easily could have said: " Provided always that if and whenever the amount owing to the society by virtue of this deed . . ."

Applying the principles of construction which he had already stated and which he believed were applicable, he felt forced to the conclusion that the defendant's contention was right. Even if the £38 15s. lent to the mortgagor to enable her to acquire the 7¾ shares were added to the £775 by construing the reference in the proviso to the " advance " as intended to include that £38 15s., still it had been conceded that, if the allocation must be made for which the defendant contended, the defendant would still be discharged.

It was contended that the words " in respect of " attached to the word " advance " in the proviso were comprehensive enough to include solicitor's charges, interest and fines, and ought not to be construed as the same as if they had been " of the advance there remains owing." There was no reason to read the words otherwise than as they would normally be used in such a context. In the ordinary use of language, a person speaking of the amount owing in respect of an advance would mean the amount of the debt remaining unpaid. There must be judgment for the defendant with costs.

COUNSEL: *Sir William McNair* and *Waddy*; *Scott Cairns*.

SOLICITORS: *Bell, Brodrick & Gray*, for *Turner, Martin and Symes*, Ipswich; *Cooper, Bake, Fettes, Roche & Wade*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

COURT OF CRIMINAL APPEAL

R. *v.* Steane

Lord Goddard, C.J., Atkinson and Cassels, JJ.

15th April and 1st May, 1947

Criminal law—Broadcasting for enemy—Intent to assist enemy——Necessity for proof of intent—Duress—Threats to prisoner's family.

The court now gave reasons for quashing the conviction of the appellant, who was convicted before Henn Collins, J., at the Central Criminal Court, of doing acts likely to assist the enemy by broadcasting over the German broadcasting system, and sentenced to three years' penal servitude. The appellant admitted having entered the German broadcasting service in January, 1940, and on several occasions broadcast certain matters through that system. When the war broke out, he was employed in Germany as a film actor. He was at once arrested and taken to Berlin, his wife and two sons remaining at Oberammergau. His evidence was that just before Christmas, 1939, he was asked by Goebbels to broadcast. He refused, and was several times warned of the dangers to himself of refusing. In consequence he submitted to a voice test, and was then ordered to read news three times a day, which he did until April, 1940, when he refused to do so any more and suffered further violence. He swore that he was in continual fear for his wife and children; that he never had the slightest idea or intention of assisting the enemy; and that what he did had been done to save his wife and children and could only have assisted the enemy in a very technical sense.

LORD GODDARD, C.J., reading the judgment of the court, said that there was undoubtedly evidence from which a jury could infer that the acts done by the appellant were likely to assist the enemy. The case as opened, and, indeed, as put by Henn Collins, J., appeared to the court to be that a man was taken to intend the natural consequences of his acts. If, therefore, he did an act likely to assist the enemy, it must be assumed that he did it with the intention of assisting the enemy. Where the essence or a necessary constituent of an offence was a particular intent, that intent must be proved by the Crown just as much as any other fact necessary to constitute the offence. While, no doubt, the motive of a man's act and his intention in doing the act were in law different things, it was nevertheless true that in many offences a specific intention was a necessary ingredient, and the jury had to be satisfied that a particular act was done with that specific intent, although the natural consequences of the act might, if nothing else were proved, be said to show the intent for which it was done. On a charge of wounding with intent to do grievous bodily harm, it was always open to the jury to negative by their verdict the intent, and to convict only of the misdemeanour of unlawful wounding. The important point was that where an intent was charged in the indictment the burden of proving that intent remained throughout on the prosecution. If, on the totality of the evidence, there was room for more than one view as to the intent of the prisoner, the jury

should be directed that it was for the prosecution to prove the intent to their satisfaction. If they were left in doubt as to the intent the prisoner was entitled to be acquitted. The court could not but feel that some confusion had arisen with regard to the question of intent by reason that so much was said on the subject of duress. Duress was a matter of defence where a prisoner was forced by fear of violence to an act which was in itself criminal. There was very little learning to be found in the books or cases on the subject of duress, and it was by no means certain how far the doctrine extended; though there was the authority of both Hale and Fitzjames Stephen that, while it did not apply to treason, murder and some other felonies, it did apply to misdemeanour—and offences against the Defence Regulations were misdemeanours. There again, however, before any question of duress arose, a jury must be satisfied that the prisoner had the intention laid in the indictment. The onus of proving duress was on the accused person, and that of proving intent on the prosecution. Another important matter, which did not seem to have been brought directly to the minds of the jury, was that very different considerations might apply where the prisoner, when he did the acts, was in subjection to an enemy power, and where he was not. British soldiers who were set to work on the Burma Road were undoubtedly doing acts likely to assist the enemy. It would be unnecessary, surely, in their case to consider any of the niceties of the law relating to duress, for no jury would find that merely by doing that work they were intending to assist the enemy. In the opinion of the court, it was impossible to say, where an act was done by a person in subjection to the power of others, particularly a brutal enemy, that an inference that he intended the natural consequences of his acts must be drawn merely from the fact that he did them. The guilty intent must be proved. The proper direction to the jury here would have been that it was for the prosecution to prove the criminal intent, and that, while they would be entitled to presume that intent if they thought that the act had been done as the result of the free and uncontrolled action of the accused person, they would not be entitled to presume it if the act was done in subjection to the enemy, or was equally consistent with a criminal intent as with an innocent intent such as the desire to save his wife and children from a concentration camp. Moreover, the judge in his summing up had not reminded the jury of the various threats to which he had sworn that he had been exposed. The jury might well have been left under the impression that, as they had been told that a man must be taken to intend the natural consequences of his acts, the threats as to which he had given evidence were of no moment. On both those grounds the court were of opinion that the conviction must be quashed.

COUNSEL: *Roberts*, K.C., and *E. Clarke*; *Gerald Howard* and *Bass*.

SOLICITORS: *Registrar of the Court of Criminal Appeal*; *Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

CUMBERLAND COUNTY COUNCIL (WATER, ETC.) BILL [H.L.] [15th May.

Read Second Time :—

PRESERVATION OF THE RIGHTS OF THE SUBJECT BILL [H.L.] [15th May.

Read Third Time :—

COTTON (CENTRALISED BUYING) BILL [H.C.] [13th May.
COTTON INDUSTRY WAR MEMORIAL TRUST BILL [H.C.] [14th May.
HOVE CORPORATION BILL [H.L.] [12th May.
NATIONAL HEALTH SERVICE (SCOTLAND) BILL [H.C.] [15th May.
SOUTHERN RAILWAY BILL [H.L.] [14th May.
TENDRING HUNDRED WATER AND GAS BILL [H.L.] [13th May.

HOUSE OF COMMONS

Read First Time :—

BRIGHTON CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.C.] [14th May.

To confirm a Provisional Order made by the Minister of Transport under the Brighton Corporation (Transport) Act, 1938, relating to Brighton Corporation Trolley Vehicles.

LONDON COUNTY COUNCIL (IMPROVEMENTS) BILL [H.C.] [15th May.

To empower the London County Council to execute street and other works and acquire lands in the Metropolitan Borough of Hammersmith; and for other purposes.

MEXBOROUGH AND SWINTON TRACTION (TROLLEY VEHICLES) PROVISIONAL ORDER BILL [H.C.] [14th May.

To confirm a Provisional Order made by the Minister of Transport under the Mexborough and Swinton Tramways Act, 1926, relating to Mexborough and Swinton Traction Company's Trolley Vehicles.

MINISTRY OF HEALTH PROVISIONAL ORDER (TUNBRIDGE WELLS) BILL [H.C.] [14th May.

To confirm a Provisional Order of the Minister of Health relating to the Borough of Royal Tunbridge Wells.

NEWHAVEN AND SEAFORD SEA DEFENCES BILL [H.C.] [15th May.

To alter the constitution of the Commissioners for the Newhaven and Seaford Sea Defence Works; to extend their powers for the construction repair and protection of sea defence works; to make further and better provision for their finances; and for other purposes.

Read Third Time :—

HELSTON AND PORTHLEVEN WATER BILL [H.C.] [16th May.

In Committee :—

NATIONAL SERVICE BILL [H.C.] [15th May.
TOWN AND COUNTRY PLANNING BILL [H.C.] [14th May.

QUESTIONS TO MINISTERS

STAMP DUTY (CHARITIES)

Sir PATRICK HANNON asked the Chancellor of the Exchequer if he has taken into consideration the letter addressed to him by Sir Malcolm Delevingne, dated 1st May, pleading for exemption from stamp duty in favour of premises to be used for charitable purposes; and if he will treat this application on the same principle as the exemption made relating to legacy and succession duties.

Mr. DALTON: I doubt whether so wide an exemption could be justified.

Sir P. HANNON: Would the Chancellor of the Exchequer look at the categories I have submitted to him, owing to their peculiarities, and reconsider the matter to see whether some concession is not possible?

Mr. DALTON: That is a very natural matter to consider when we are taking the Finance Bill in committee. Charity, of course, in the legal sense is very widely used, and it was for that reason that I have given the reply I have. I do not think a wide exemption would be practical. [13th May.

ENFORCEMENT OFFICERS (SEARCHES)

Sir JOHN MELLOR asked the Financial Secretary to the Treasury if he will instruct Departments that enforcement officers and inspectors, authorised to search private dwellings, shall not seek admission unless accompanied by a police officer in uniform.

Mr. GLENVIL HALL: No, sir. Apart from the merits of the hon. member's proposal, any such general instructions would be inappropriate.

Sir J. MELLOR: How can householders distinguish between authorised officials with genuine credentials and robbers with forged credentials?

Mr. GLENVIL HALL: The number of cases where enforcement officers have to visit private residences is very small indeed. Where it does occur an effort is made for the visit to take place by arrangement with the person concerned. It would, in my view, be unfair to the individual who is visited if the neighbours saw a police officer arrive in uniform.

Mr. CHURCHILL: Have they got a written warrant or authority?

Mr. GLENVIL HALL: Yes, sir. The enforcement officer, of course, has this right, and he has official credentials for making the visit. [13th May.

COMPANIES ACT (ANNUAL REPORT)

Major BRUCE asked the President of the Board of Trade, whether he is aware that the last General Annual Report prepared and issued by his Department in statutory compliance with s. 376 of the Companies Act, 1929, is dated 9th August, 1939, and covers the year ended 31st December, 1938; whether he will indicate the date on which it is proposed to resume publication; and whether it is proposed to cover each of the years from 1939 onwards.

Mr. BELCHER: Yes, sir. For reasons of manpower and paper saving the publication of the report was suspended in 1939. My right hon. and learned friend has given instructions for the printing of a report to cover the years 1939 to 1945, and it will be available shortly. For the year 1946 and onwards it is proposed to issue the report in its pre-war form. [13th May.

NATIONAL INSURANCE APPEALS (LEGAL REPRESENTATION)

Mr. LAW asked the Minister of National Insurance if he will

consider changing the regulations in order to enable an insured person to become entitled to legal representation when appearing before a Court of Referees.

Mr. J. GRIFFITHS: No, sir. The reasons in favour of the existing practice are just as strong to-day as they were when this question was considered on various occasions in the past. [13th May.

LAND TRANSFER COMMITTEE (RECOMMENDATION)

Mr. W. J. BROWN asked the Attorney-General whether, having regard to the time limit recommended in para. 238 of the Scott Report on Land Utilisation in Rural Areas, His Majesty's Government intend to implement the Report of the Land Transfer Committee of September, 1943, presided over by Lord Rushcliffe.

THE ATTORNEY-GENERAL: As my hon. friend is aware, the Rushcliffe Committee on Land Transfer recommended that until a reasonable period has elapsed after the termination of hostilities for sufficient staff to become available both for the purposes of the Land Registry itself and for those solicitors who would have business in the Registry, it would not be possible to make further progress with the compulsory registration of title in England and Wales. There has been and still is a shortage of trained staff in the Land Registry, and notwithstanding every effort to increase the staff, the Registry have still some difficulty in keeping abreast of the current work. In these circumstances, it is impossible to forecast when the conditions laid down by the Rushcliffe Committee will be fulfilled. When those conditions are fulfilled, my noble friend hopes to proceed with the implementation of the Scott Report in the manner recommended by the Rushcliffe Committee. [13th May.

RENT TRIBUNALS (CHAIRMEN)

Mr. WILLIAM SHEPHERD asked the Minister of Health the process of selection of chairmen of Rent Restriction Tribunals; and whether he is satisfied that it is adequate to ensure a wise choice.

Mr. ANEURIN BEVAN: The chairmen of rent tribunals are selected from nominations made by local authorities, legal and other representative bodies, and from applications made by individuals. The answer to the second part is, Yes, sir.

Mr. SHEPHERD: Does the right hon. gentleman consider that some of the actions and utterances of the chairmen of these tribunals are consistent with the judicial capacity in which they sit?

Mr. BEVAN: I think the utterances of most of the chairmen of these rent tribunals compare very favourably indeed with those of the courts. [15th May.

LEGAL EDUCATION

Mr. PALMER asked the Attorney-General (1) if steps are to be taken to carry out the recommendations of the Legal Education Committee, Cmd. 4663, 1934; (2) if the committee appointed by the Lord Chancellor's Department, in May, 1938, to consider the proposed Institute of Advanced Legal Studies, has reported.

THE ATTORNEY-GENERAL: The recommendations contained in the report of the Legal Education Committee fell under two main heads (1) in Part A thereof, that a Standing Advisory Committee be set up to perform the functions enumerated in para. 21 of the report, and (2) in Part B, that a committee be set up to consider the proposal for an Institute of Advanced Legal Studies. As respects the recommendation in Part A, the functions enumerated in para. 21 are being satisfactorily performed by the Council of Legal Education in relation to the Bar examinations and by the Council of The Law Society in relation to examinations for solicitors. These two councils are in a position to maintain liaison with the law faculties of the universities on the subjects to be taken at professional examinations and the courses of study involved, and to co-ordinate the teaching of particular subjects. The councils advise on the exemptions for professional examinations to be attained by students who have qualified in university examinations and they are also available for consultation by Government Departments or official committees interested in legal education, and for advising generally in such matters. In the circumstances no useful purpose would be served by setting up an advisory committee.

The recommendation in Part B of the report was implemented by the appointment in 1938 of the committee to which the hon. member refers in his second question. This committee has not reported. It suspended proceedings in February, 1940, and has not yet resumed operations. Having regard to the urgent need for reconstructive activities in other directions and to the Government's legislative programme the time is inappropriate for the resumption of the committee's operations or the setting up of an Institute of Advanced Legal Studies should such a course be recommended. [15th May.

INCOME TAX AND DEATH DUTIES

Mr. W. WELLS asked the Chancellor of the Exchequer whether the extra-statutory wartime concessions, No. 6 (Income Tax) and No. 2 (i) (Death Duties), which relate to compulsory remittances of foreign currency and requisitions of foreign securities under the Defence (Finance) Regulations, will apply to remittances and requisitions under the Exchange Control Act.

Mr. DALTON: For the time being these concessions will continue and will apply to compulsory remittances and requisitions, whether under the Defence (Finance) Regulations or under the Exchange Control Act. But this must be regarded as a purely temporary measure, and I propose later in the year to review the matter and to fix a definite date for the withdrawal of the concessions. [16th May.

RULES AND ORDERS

S.R. & O., 1947, No. 913/L.14

COUNTY COURT, ENGLAND

COURTS AND DISTRICTS

THE COUNTY COURT DISTRICTS (HOLT AND NORTH WALSHAM) ORDER, 1947. DATED APRIL 30, 1947

I, William Allen Viscount Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by Section 2 of the County Courts Act, 1934,* and all other powers enabling me in this behalf, do hereby order as follows:—

1.—(1) The Holt County Court and the North Walsham County Court shall be discontinued, and the districts of the said County Courts shall be consolidated and a Court shall be held for the consolidated district at Cromer by the name of the Cromer County Court:

Provided that no process shall be invalid by reason only that the Court is described therein as the Holt County Court or the North Walsham County Court.

(2) The Court held for the consolidated district shall have jurisdiction with respect to proceedings pending in either Court when this Order comes into operation.

2. The parishes set out in the first column of the Schedule to this Order shall be transferred to and form part of the County Court Districts set opposite to their names respectively in the second column of the said Schedule.

3. In this Order the expression "parish" shall have the same meaning as in the Local Government Act, 1933.†

4. This Order may be cited as the County Court Districts (Holt and North Walsham) Order, 1947, and shall come into operation on the first day of June, 1947, and the County Court Districts Order, 1938,‡ shall have effect as amended by this Order.

Dated this 30th day of April, 1947. *Jowitt*, C.

SCHEDULE

First Column Parishes	Second Column County Court District to which transferred
Ashmanhaugh	Norwich.
Barton Turf	
Horning	
Hoveton	
Neatishead	
Scottow	
Smallburgh	
Tunstead	
Brumstead	Great Yarmouth.
Catfield	
Hickling	
Ingham	
Lessingham	
Ludham	
Palling	
Stalham	
Sutton	
Bringham	Fakenham.
Brinton	
Briston	
Gunthorpe	
Hindolveston	
Melton Constable	
Thurning	

* 24 & 25 Geo. 5. c. 53. † 23 & 24 Geo. 5. c. 51. ‡ S.R. & O. 1938 (No. 470) I, p. 706.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 864. **Factories** (Luminising) (Health and Safety Provisions) (Revocation) Order. May 7.

No. 865. Factories (Luminising) Special Regulations. May 7.

No. 826. **Workmen's Compensation.** Byssinosis (Benefit) Amendment Scheme. April 30.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The King has approved, on the recommendation of the Lord Chancellor, the names of the following for appointment to the rank of King's Counsel: The Hon. Sir ALBERT E. A. NAPIER, Mr. R. H. E. H. SOMERSET, Mr. E. ROWSON, Sir JOHN ARMITAGE STAINTON, Mr. L. I. HORNIMAN, Mr. R. C. VAUGHAN, Mr. H. MALONE, Mr. S. R. EDGEDALE, Mr. J. V. NAISBY, Mr. W. A. L. RAEBURN, Mr. N. A. BEECHMAN, M.P., Mr. G. R. HINCHCLIFFE, Mr. R. CLEWORTH, Mr. W. A. DAVIES, Mr. J. PENNYCUICK, Mr. A. P. MARSHALL, Mr. D. A. S. CAIRNS, Mr. H. B. H. HYLTON-FOSTER, Mr. A. L. UNGOED-THOMAS, M.P., Mr. F. A. LINCOLN, Mr. J. S. BROOKE LLOYD, M.P., Mr. H. B. WILLIAMS and Mr. R. T. PAGET, M.P.

The King has approved the appointment of Mr. EDWARD HOLROYD PEARCE, K.C., to be a Commissioner of Assize on the Northern Circuit.

The Lord Chancellor has appointed Mr. LEONARD HENRY DOVETON HODGES to be Assistant Registrar of County Courts as from the 28th April, 1947. Mr. Hodges will be stationed at Bristol County Court.

The following appointments are announced in the Colonial Legal Service: Mr. H. V. ANDERSON, Assistant Registrar-General, Kenya, to be Administrator-General, Zanzibar; Mr. F. E. FIELD, Stipendiary and Circuit Magistrate, Bahamas, to be Crown Counsel, Nigeria; Mr. P. C. HUBBARD, President, District Courts, Palestine, to be Puisne Judge, Palestine; Mr. H. H. KINGSLEY, Crown Counsel, Tanganyika, to be Puisne Judge, Sierra Leone; Mr. W. WELLS-PALMER, Administrator-General, Nigeria, to be Puisne Judge, Nigeria; Mr. T. T. RUSSELL, Crown Counsel, Malaya, to be Puisne Judge, Malaya; Mr. E. N. TAYLOR, Official Assigne, Singapore, to be Puisne Judge, Malaya; Mr. T. D. B. KIMPTON, to be Resident Magistrate, Northern Rhodesia and Mr. J. L. WARD, to be Legal Officer, British Somaliland.

The Right Honourable LORD MACDERMOTT, M.C., has been elected an Honorary Master of the Bench of Gray's Inn.

Professional Announcement

Mr. WILLIAM PERCY WEBB and Mr. GEORGE VICTOR MAX HAMER, practising as Messrs. WILLIAM P. WEBB (incorporating Messrs. Justice and Pattenden), at 4 and 5 Verulam Buildings, Gray's Inn, W.C.1, have opened a branch office at 24 Haymarket, S.W.1, where they are also practising under the name of WEBB, JUSTICE & Co. (Telephone: Whitehall 2683). The Gray's Inn practice will continue as before.

Notes

SOCIETY OF CHAIRMEN AND DEPUTY-CHAIRMEN OF QUARTER SESSIONS

The Society of Chairmen and Deputy-Chairmen of Quarter Sessions gave a dinner on 15th May at the Savoy Hotel. The guests were: Lord Goddard, the Hon. Sir Albert Napier, Mr. Justice Lynskey, Mr. J. B. Herbert, Mr. C. W. Radcliffe and Mr. A. G. Graves.

LORD MERRIMAN

Lord Merriman, President of the Probate, Divorce, and Admiralty Division, having been medically advised that he is in need of a rest, will, with the approval of the Lord Chancellor, be absent from the Courts during the Trinity Sittings. He is advised that he will be able to resume his full duties after the Long Vacation. During the President's absence Mr. Justice Hodson will be in charge of the Division.

COMMITTEE ON COUNTY COURT PROCEDURE

The Committee on County Court Procedure, recently appointed by the Lord Chancellor under the chairmanship of Mr. Justice Austin Jones, have held their first meeting and have issued the following notice:—

Any person or organisation desiring to submit a memorandum on matters falling within the Committee's terms of reference (which are "to inquire into the present practice and procedure of the County Court and to consider what reforms might be introduced with a view to reducing the cost of litigation and for securing greater efficiency in the despatch of business") is invited to communicate in writing with the Secretary, Mr. R. C. L. Gregory, County Courts Branch, Lord Chancellor's Department, Millbank House, 2 Great Peter Street, Westminster, S.W.1. The question of any extension or alteration of County Court jurisdiction does not come within the Committee's terms of reference. It will be of great assistance if sixteen copies of each memorandum can be furnished.

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price May 19 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	115	3 9 7	2 3 0
Consols 2½%	JAJO	96	2 12 1	—
War Loan 3% 1955–59	AO	107	2 16 1	2 0 8
War Loan 3½% 1952 or after	JD	106½	3 5 9	2 4 3
Funding 4% Loan 1960–90	MN	118½	3 7 6	2 6 8
Funding 3% Loan 1959–69	AO	107	2 16 1	2 6 5
Funding 2½% Loan 1952–57	JD	104½	2 12 8	1 15 9
Funding 2½% Loan 1956–61	AO	103½	2 8 4	2 1 3
Victory 4% Loan Av. life 18 years	MS	120	3 6 8	2 11 11
Conversion 3½% Loan 1961 or after	AO	112½	3 2 3	2 8 9
National Defence Loan 3% 1954–58	JJ	107	2 16 1	1 15 0
National War Bonds 2½% 1952–54	MS	103½	2 8 4	1 16 11
Savings Bonds 3% 1955–65	FA	106½	2 16 4	2 0 9
Savings Bonds 3% 1960–70	MS	107	2 16 1	2 7 3
Treasury 3%, 1966 or after	AO	107	2 16 1	2 10 8
Treasury 2½%, 1975 or after	AO	97	2 11 7	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	102	2 18 10	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	102	2 13 11	—
Redemption 3% 1986–96	AO	113	2 13 1	2 9 5
Sudan 4½% 1939–73 Av. life 16 years	FA	121	3 14 5	2 16 11
Sudan 4% 1974 Red. in part after 1950	MN	115½	3 9 3	—
Tanganyika 4% Guaranteed 1951–71	FA	106½	3 15 1	2 0 3
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101½	2 9 3	—
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	111½	3 11 9	2 5 9
Australia (Commonw'h) 3½% 1964–74	JJ	110	2 19 1	2 10 4
*Australia (Commonw'h) 3% 1955–58	AO	104½	2 17 5	2 8 1
†Nigeria 4% 1963	AO	119½	3 6 11	2 10 2
*Queensland 3½% 1950–70	JJ	104	3 7 4	—
Southern Rhodesia 3½% 1961–66	JJ	112½	3 2 3	2 8 10
Trinidad 3% 1965–70	AO	108	2 15 7	2 8 5
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100½	2 19 8	—
*Leeds 3½% 1958–62	JJ	107	3 0 9	2 10 2
*Liverpool 3% 1954–64	MN	105	2 17 2	2 4 3
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	120½	2 18 1	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	101	2 19 5	—
*London County 3½% 1954–59	FA	110	3 3 8	1 19 8
*Manchester 3% 1941 or after	FA	100	3 0 0	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 8 7
Met. Water Board "A" 1963–2003	AO	103½	2 18 0	2 14 7
* Do. do. 3% "B" 1934–2003	MS	102	2 18 10	—
* Do. do. 3% "E" 1953–73	JJ	104	2 17 8	2 4 2
Middlesex C.C. 3% 1961–66	MS	106	2 16 7	2 9 10
*Newcastle 3% Consolidated 1957	MS	105	2 17 2	2 8 7
Nottingham 3% Irredeemable	MN	107	2 16 1	—
Sheffield Corporation 3½% 1968	JJ	115	3 0 10	2 11 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	125	3 4 0	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	137½	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	131½	3 16 1	—
Gt. Western Rly. 5% Preference	MA	119½	4 3 8	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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